

quantity or capacity specified for each.⁴⁷ The Rosemead District listed 68 separate services or functions with a Districtwide quantity or capacity specified for each.⁴⁸

There are no apparent “striking similarities” among the Applicants’ “quantity or capacity” responses. To the extent that “similarities” exist among the Applicants’ specified services or functions, it is because each item listed on their Forms 470 is listed in the same or virtually the same manner on the SLD’s Eligible Services List.⁴⁹

In addition to the mistaken factual determinations by SLD, its conclusion that “similarities in Internal Connections description on Forms 470 ... indicate that [Spectrum] was improperly involved in the competitive bidding and vendor selection process” apparently is premised upon a determination – not stated in the Decisions or the Further Explanations – that a service provider may not assist an applicant in preparing Form 470. Such a determination is entirely inconsistent with explicit advice given to applicants and service providers alike by SLD about the reliance applicants may place on service providers to obtain information. Service providers may “act[] in a neutral, advisory role, to provide basic information about the E-Rate Program and the application process.”⁵⁰ “Basic information” clearly includes information about *eligible services and use of the SLD’s web site to confirm what services are eligible*. Spectrum

⁴⁷ Romoland District Ex. 3 at 4-6.

⁴⁸ Rosemead District Ex. 3 at 3-4.

⁴⁹ Statements made at the Commission’s recent Public Forum on Improving Administration of the E-Rate Program shed light on the operation of the PIA program that may explain the defects in the Decisions and Further Explanations. Greg Weisiger, representing the Council of Chief State School Officers E-Rate Alliance, stated, “USAC hires temporary workers each year. They are trained in an extensive two-week regimen[] and thrown out on the front lines of application review....” Comments of Greg Weisiger at 4. Mr. Weisiger’s comments also suggest that the importance of close involvement with PIA staff and that, based on recent funding request denials, “perhaps we did not spend enough time briefing our [Selective] reviewers this spring.” *Id.*

⁵⁰ Service Provider Guide, § 5 at 1.

did not provide any information to the Applicants that is not consistent with this explicit guidance to service providers to provide applicants with accurate information about the E-Rate Program and to refer applicants to the SLD's web site and guidelines. Indeed, Spectrum believes it has an obligation to do exactly that. Notably, in the Denials and Further Explanations, SLD did not cite a single instance in which any Applicant or Spectrum acted contrary to any Commission or SLD rule or guideline.⁵¹

Simply put, descriptions of services on which bids are requested – whether similar or not – would be relevant to the question of whether an applicant conducted fair and open bidding only if those descriptions were prepared in a manner that favored a particular service provider. The SLD reached no such conclusion here. The Applicants' Forms 470 gave all potential bidders the same information about the services and products on which the Applicants wished to receive bids.

In any event, Spectrum's involvement in the Applicants' Form 470 process was limited and neutral. As noted above, Spectrum, under the auspices of the California Department of Education, conducts E-Rate training workshops for schools and libraries. Training is required to be conducted on a neutral basis, and includes assisting potential applicants in identifying eligible services – a role specifically endorsed by SLD.⁵² At least one Applicant (El Monte District) attended such a workshop.⁵³ Another Applicant, Lucerne District, was part of a consortium of

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As noted above, a service provider is permitted to assist applicants in developing an RFP even if the vendor will submit a bid (Service Provider Guide, § 5 at 1); such assistance necessarily must include assistance in determining which services are eligible for E-Rate funding for purposes of identifying such services on Form 470. Consequently, it would be inconsistent for the SLD to allow vendor involvement with an RFP but prohibit involvement with Form 470 service selection.

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Service Provider Guide, § 5 at 1.

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See El Monte District Declaration at 2.

school districts and advised the consortium's representative to apply for all eligible services.⁵⁴ Applicants El Monte District, Hemet District, Lucerne District, and Romoland District each has affirmed that it (or, in the case of Lucerne District, the representative of the consortium of which it was a member) was responsible for the selection of internal connections services listed in its Form 470 and that Spectrum was not improperly involved in that process.⁵⁵

C. Spectrum Was Not Improperly Involved in Any Applicant's Competitive Bidding and Vendor Selection Process

As noted, Form 470 clearly states that "[t]he purpose of the FCC Form 470 is to open a competitive bidding process,"⁵⁶ which ends when the applicant reaches an agreement or signs a contract with a service provider. In the Decisions and Further Explanations, SLD stated that "similarities" in "description[s] ... of the vendor selection process" provided in response to Information Requests "indicate" improper vendor involvement by Spectrum in the competitive bidding and vendor selection process.⁵⁷ As with the purported similarities in internal connection descriptions in the Applicants' Forms 470, however, the descriptions cited by SLD had no bearing on the competitive bidding and vendor selection process.

No "competitive bidding and vendor selection process" exists prior to posting Form 470, or after a vendor is selected and a contract is signed. The Information Request responses were prepared and submitted long after the competitive bidding ended and Spectrum was selected; those responses were not part of the competitive bidding and vendor selection process.

⁵⁴ See Lucerne District Declaration at 2.

⁵⁵ El Monte District Declaration at 2; Hemet District Declaration at 2; Lucerne District Declaration at 2; Romoland District Declaration at 2.

⁵⁶ FCC Form 470 Instructions at 1.

⁵⁷ See, e.g., Hemet District Ex. 1; Inglewood District Ex. 2 at 2.

Consequently, *descriptions* of the vendor selection process provided by the Applicants – long after the competitive bidding and vendor selection process ended – cannot, as a matter of fact, law, or logic, support the SLD’s speculative conclusion that Spectrum was “improperly involved” *during* that process.

As even SLD concedes, the “descriptions” it refers to in the Further Explanations can, at most, lead only to an inference or “indicat[ion]” of improper involvement, and cannot, standing alone, prove such involvement. Here, however, the descriptions do stand alone. In the Denials and Further Explanations, SLD did not cite a single instance in which the Applicants or Spectrum acted contrary to any Commission or SLD rule during the competitive bidding and vendor selection process. The only “vendor involvement” referred to by SLD occurred before and after the competitive bidding and vendor selection process. SLD did not cite any action by Spectrum that “unfairly influenced the outcome” of the process or that “interfere[d] with competitive bidding,” and each Applicant has submitted information confirming that Spectrum did not do so.⁵⁸

The “description” of the vendor selection process cited in the Decisions and the Further Explanations was Item 4 of the Information Request Worksheet, which states:

Please provide complete documentation indicating how and why you selected the service provider(s) selected. This documentation should include a description of your evaluation process and the factors you used to determine the winning contract(s).⁵⁹

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El Monte District Declaration at 3; Hemet District Declaration at 2; Inglewood District Beckwith Declaration at 4; Lucerne District Declaration at 2-3; Romoland District Declaration at 2. See also Rosemead District Ex. 5, Letter from Dr. Lila Wills Bronson, Director of Technology, Rosemead School District, to Michael Deusinger, USAC, February 10, 2003 (providing detailed description of Rosemead District’s competitive bidding and vendor selection process, including steps taken to resolve problems with another vendor experience for Funding Year 4).

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El Monte District Ex. 2 at 2; Hemet District Ex. 2 at 2; Inglewood District Ex. 2 at 2; Lucerne District Ex. 2 at 2; Romoland District Ex. 2 at 3; Rosemead District Ex. 2 at 2.

The Applicants' responses to Item 4 are similar, but not identical.⁶⁰ Rosemead District stated additional factors regarding its vendor selection process,⁶¹ and each Applicant's Information Request responses contained other information regarding its vendor selection criteria.⁶² Moreover, each Applicant submitted additional information about its competitive bidding and vendor selection process.⁶³ However, SLD relied solely on the similarities between the responses, and did not consider the substance of the responses, which demonstrated that each Applicant had a valid, if similar, reason for selecting Spectrum.⁶⁴

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Copies of the Applicants' Information Request responses are included as El Monte District Exhibit 4, Hemet District Exhibit 4, Inglewood District Exhibit 4, Lucerne District Exhibit 4, Romoland District Exhibit 4, and Rosemead District Exhibit 4, respectively. The portion of the response that is similar among Applicants states: "Spectrum Communications was selected by [the District] under the CMAS procurement program and other applicable procurement codes. Spectrum Communications provides the most cost-effective product, with the least amount of hassle, and exceeds District requirements for Information Technology projects. Spectrum Communications understands the Business Operations of [the District], due to the many years that this vendor has been successfully utilized for Information Technology Projects. It is allowable under California Public Contract Code 10299 for [the District] to select Spectrum Communications under the CMAS agreement without further competitive bidding." *See* El Monte District Ex. 4 at 4; Hemet District Ex. 4 at 3; Inglewood District Ex. 4 at 3; Lucerne District Ex. 4 at 2; Romoland District Ex. 4 at 3; Rosemead District Ex. 4 at 4.

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See Rosemead District Ex. 4 at 4 ("Please Note: As Rosemead School District is a member of a 19 District Educational Technology Consortium, we meet monthly to discuss technology planning, ERATE and grant funding proposals, staff development planning, vendor selection criteria, network operations, staffing and other pertinent issues. This forum has been an invaluable resource to me ... to make the appropriate recommendations regarding vendors and other technical matters with respect to ERATE.").

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See El Monte District Ex. 4 at 2-3; Hemet District Ex. 4 at 2-3; Inglewood District Ex. 4 at 2; Lucerne District Ex. 4 at 1-2; Romoland District Ex. 4 at 2-3; Rosemead District Ex. 4 at 2-3.

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See El Monte District Exhibit 5; Hemet District Exhibit 5; Inglewood District Exhibit 5; Lucerne District Exhibit 5; Romoland District Exhibit 5; Rosemead District Exhibit 5.

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It is not clear why SLD focused solely on the Applicants' responses regarding the selection of its internal connections services provider, as there also were substantial similarities in the Applicants' descriptions of their vendor selection process and criteria for telecommunications and Internet services as well. *See* El Monte District Ex. 4 at 2-4; Hemet District Ex. 4 at 2-3; Inglewood District Ex. 4 at 1-3; Lucerne District Ex. 4 at 1-2; Romoland District Ex. 4 at 2-3; Rosemead District Ex. 4 at 1-4. The SLD's discrimination in the selective review process constitutes unlawful, arbitrary and capricious decisionmaking.

Spectrum did assist the Applicants by providing information used by the Applicants to prepare the response to Item 4.⁶⁵ As explained below, however, neither the Applicants nor Spectrum had any knowledge, notice or warning that the assistance Spectrum provided was not permitted or would result in denial of the funding requests, and only after the SLD issued the Decisions did it prohibit such assistance.

D. The Prohibition on Vendor Assistance in the Selective Review Process Constitutes Unlawful Retroactive Application of New Procedures

In the Further Explanations, SLD stated that “[i]t is inappropriate for a service provider to answer questions regarding the competitive bidding process [or] vendor selection.” This determination announces a new policy of which no E-Rate Program participant, including the Applicants and Spectrum, had prior notice and which, as applied to the Applicants, constitutes an unlawful retroactive penalty.

Until May 13, 2003, there existed no rules or policies regarding the Information Request process. As noted above, the Service Provider Guide advises that PIA staff “may reach out to the applicant, the Service Provider or both in an effort to clarify information contained in the application or supporting documentation” and then specifically instructs vendors to “help your applicants comply with [PIA] deadlines” for supplying such information.⁶⁶ The Service Provider Guide also states that “[b]oth the applicant and the Service Provider can be resources to ... PIA staff during application review.”⁶⁷ The Information Request Instructions and Worksheet received

⁶⁵ Spectrum previously acknowledged that it assisted its customers in their Selective Review responses, in particular to clarify applicable state law procurement rules and procedures. *See* Letter from P. Pendergrass, General Counsel of Spectrum, to Scott A. Barash, General Counsel of SLD, April 7, 2003 (included as Attachment 5).

⁶⁶ Service Provider Guide § 6 at 2.

⁶⁷ *Id.* § 5 at 3.

by the Applicants do not prohibit such cooperation.⁶⁸ Thus, not only did the Applicants and Spectrum have no notice that Spectrum could not assist the Applicants, but such assistance appeared to be expressly permitted. Spectrum offered assistance to the Applicants in good faith and with the intention of fulfilling its obligations, as it understood them, to provide ongoing assistance to its customers.

Only after SLD released the Decisions and the Further Explanations did it announce any limitations on vendor involvement in the PIA and Selective Review process. The Selective Review Announcement, posted on the SLD's Service Provider web page on May 13, apparently was the first public reference to the Selective Review process.⁶⁹ The Selective Review Announcement states, "SLD allows service providers to serve as the contact person on FCC Forms 471 because the service provider is often in the best position to answer the SLD's questions regarding the services for which funding has been sought on the Form 471. However, it is not appropriate for service providers to provide the answers to the Selective Review Information request. In particular, the service provider selected by the applicant must not answer questions regarding the competitive bidding process, vendor selection, and the applicants' ability

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See, e.g., Attachment 4.

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Limited discussion of Selective Review occurred only recently on the biweekly Service Provider Conference Call held by SLD. SLD posts on its web site the Minutes from each such call, which began in September 2000. At no time did SLD state that vendor assistance is not allowed. During the March 26, 2003, call, one participant asked "Why doesn't the SLD communicate with the applicant and service provider during the review process in order to allow the service provider or applicant to assist in clearing potential problems?" SLD responded that it "do[es] reach out in the vast majority of cases when we need additional information. When we are investigating allegations of abuse, we often can't communicate without compromising the investigation." Minutes from the Wednesday Service Provider Conference Call, March 26, 2003, <<http://www.sl.universalservice.org/vendor/agenda/032603.min>>. During the April 9, 2003 call, a participant asked, with respect to Selective Review, "How does the SP get[] involved in the questions?" SLD responded simply that "[o]n the services side, applicants may seek assistance from the service provider; however, some questions that we ask the applicant, the SP cannot and should not answer." Minutes from the Wednesday Service Provider Conference Call, April 9, 2003, <<http://www.sl.universalservice.org/vendor/agenda/040903.min>>.

to pay their share of the cost.”⁷⁰ This language is nearly identical to the April 22, 2003 Further Explanations, and plainly constitutes a new policy; prior to May 13, 2003, no prohibition against such assistance existed in the Commission’s rules, the SLD’s web site, the Service Provider Guide, or any other materials of which the Parties were aware.

The application of this new prohibition to the Applicants attaches new legal consequences to events completed long before its adoption and thus constitutes unlawful retroactive punishment.⁷¹ This ad hoc retroactive change to SLD policies unfairly penalizes students who have clear needs for the benefits of the E-Rate Program, whose districts relied in good faith on existing SLD policies in their selection of service providers. Because the penalty – denial of funding – would work a “manifest injustice,” the Decisions must be reversed.⁷²

E. The Applicants Prepared the Information Request Responses

The Further Explanations state: “The person authorized by the applicant to sign on the applicant’s behalf, or the entity’s authorized representative, is required to certify that the authorized signer prepared the responses to the Selective Review Information Request on behalf

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See Attachment 4. The rationale for this new policy is not stated, and in light of the contradictory request in the Service Provider Manual that service providers “help your applicants” in resolving issues and responding to PIA staff requests, no rationale is apparent. Information regarding an applicant’s vendor selection and contracting processes is, under California law, readily obtainable; moreover, it simply is not logical to infer, as SLD did, that prior events being described (the competitive bid and vendor selection process) “became” tainted by a description of that process provided well after those events occurred.

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See Landgraf v. USI Film Products, 511 U.S. 244, 269-70 (1994).

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Verizon Tel. Cos. v. FCC, 296 F.3d 1098 (D.C. Cir. 2001) (quoting *ClarkCowlitz Joint Operating Agency v. FERC*, 826 F.2d 1074, 1081 (D.C. Cir. 1987) (*en banc*)). SLD’s application of a retroactive punishment also clearly exceeds authority delegated to USAC. The Commission’s rules prohibit USAC from making policy, interpreting unclear provisions of law, or interpreting Congressional intent, and require USAC to seek guidance from the Commission when the Act or the Commission’s rules are unclear or do not address a particular situation. 47 C.F.R. § 54.702(c). Thus, neither USAC nor SLD possesses authority to apply retroactively the new policy contained in the Selective Review Announcement – or to adopt such a policy in the first instance.

of the entity,”⁷³ and, further, that “USAC concluded that these responses [*i.e.*, the Applicants’ responses to Item 4 of the Information Request] had been prepared by the service provider and provided to the applicant, and were not prepared by the applicant as required under the Schools and Libraries Support Mechanism.”⁷⁴

The Information Request requires an applicant to certify that “I ... prepared the responses to this fax.” The common definition of “prepare” is “to make ready, usually for a specific purpose”; an alternative meaning is “to put together or make out of ingredients, parts, etc.”⁷⁵ Notwithstanding the SLD’s conclusion that the Applicants did not “prepare” their Information Request responses, that is exactly what they did. “Prepare” is not defined as “creating without assistance from any outside source,” as SLD has interpreted it. The signatory for El Monte District, Hemet District, Inglewood District, Lucerne District, and Romoland District instructed others, including Spectrum, to compile information that he or she believed to be responsive to the Information Request, and then reviewed, or had another District staff person review, that information, confirmed its accuracy, instructed others to type out that information, and attested to its accuracy by signing the certification.⁷⁶ Spectrum provided information – in particular, detailed information about state procurement rules and procedures.

⁷³ El Monte District Ex. 2 at 2; Hemet District Ex. 2 at 2; Inglewood District Ex. 2 at 2; Lucerne District Ex. 2 at 2; Romoland District Ex. 2 at 2; Rosemead District Ex. 2 at 2 (in each case citing E-Rate Selective Review Information Request, Funding Year 2002 at 15).

⁷⁴ El Monte District Ex. 2 at 2-3; Hemet District Ex. 2 at 2-3; Inglewood District Ex. 2 at 2; Lucerne District Ex. 2 at 2-3; Romoland District Ex. 2 at 2-3; Rosemead District Ex. 2 at 2-3.

⁷⁵ Webster’s New World Dictionary, Third College Edition.

⁷⁶ See El Monte District Declaration at 4; Hemet District Declaration at 4; Inglewood District Declaration at 4; Lucerne District Declaration at 4; Romoland District Declaration at 3-4. Spectrum provided similar assistance to the Rosemead District signatory.

Under the circumstances, it is incontrovertible that each Applicant “prepared” its Information Request responses and that its certification on the Information Request was not false. In the Further Explanations, SLD states that it will not accept an applicant’s certification that it prepared its responses if the applicant received vendor assistance in connection with certain questions.⁷⁷ As with its new policy against certain types of vendor assistance, this statement announced a new policy that may not be applied retroactively to deny the Applicants’ Funding Year 2002 requests.

F. The Applicants Conducted a Fair and Open Bidding Process and Did Not Surrender Control to Spectrum

The Further Explanations state that “USAC sought to ensure that you had complied with” the requirement to “carefully consider all bids” “by seeking a description of your competitive bidding process, your vendor evaluation process and the factors you used to determine the winning contract. Based on the evidence described above, USAC reasonably has concluded that the description of this process that you provided to USAC appears to have been prepared by your service provider.”⁷⁸ The Applicants’ responses, however, in no way indicate that any Applicant did not comply with its obligation to carefully consider all bids. Applicants “may consider relevant factors other than the pre-discount prices submitted by providers,”⁷⁹ although “price should be the primary factor.”⁸⁰ Additional factors that may be considered, where permitted by

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See, e.g., Lucerne District Ex. 2.

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El Monte District Ex. 2 at 2; Hemet District Ex. 2 at 2; Inglewood District Ex. 2 at 2; Lucerne District Ex. 2 at 2; Romoland District Ex. 2 at 2; Rosemead District Ex. 2 at 2 (citing 47 C.F.R. § 54.511(a)).

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47 C.F.R. § 54.511(a).

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Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, 9029 (1997), ¶481, as corrected by *Errata*, FCC 97-157 (rel. June 4, 1997), *aff’d in part, rev’d in part, and remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999).

state and local procurement laws, include “prior experience, including past performance; personnel qualifications, including technical excellence; management capability, including schedule compliance; and environmental objectives.”⁸¹ The Applicants’ Information Request and supplemental responses reflect reliance on permitted factors,⁸² and SLD did not find deficient any Applicant’s compliance with its obligation to carefully consider all bids, or the factors used in such consideration.⁸³

Moreover, in relying solely on “the evidence described above,” SLD ignored other information provided by each Applicant during the Selective Review demonstrating that it conducted a “fair and open” competitive bidding process. For example, SLD requested additional information from each Applicant after the Information Request responses were received, and the Applicants responded by submitting additional detailed information about California state procurement rules and its selection of Spectrum.⁸⁴

Each Applicant has demonstrated that it conducted a fair and open competitive bidding process and did not surrender control to Spectrum.⁸⁵ Apart from the “similarities” cited by SLD

⁸¹ *Id.*

⁸² See El Monte District Exhibits. 4, 5; Hemet District Exhibits. 4-5; Inglewood District Exhibits. 4-5; Lucerne District Exhibits. 4-5; Romoland District Exhibits 4-5; Rosemead District Exhibits 4-5.

⁸³ As the Commission has stated, “[e]ven if an incumbent service provider might have a competitive advantage in a bidding process, it does not exert control over the bidding process to the disadvantage of other potential bidders.” *Mastermind* at n.35.

⁸⁴ See El Monte District Exhibit 5 (September 18, 2002 and January 31, 2003 responses to SLD supplemental information requests; Hemet District Exhibit 5 (January 30, 2003 and February 4, 2003 responses to SLD supplemental information requests); Inglewood District Exhibit 5 (January 31, 2003 and February 3, 2003 responses to SLD supplemental information requests); Lucerne District Exhibit 5 (February 21, 2003 response to SLD supplemental information request); Romoland District Exhibit 5 (January 24, 2003 and January 31, 2003 responses to SLD supplemental information requests); Rosemead District Exhibit 5 (September 25, 2002 and February 10, 2003 responses to SLD supplemental information requests).

⁸⁵ See El Monte District Declaration, Hemet District Declaration, Inglewood District Declaration; Lucerne District Declaration; Romoland District Declaration. See also Rosemead District Exhibits 4, 5.

– which, as shown, to the extent they exist do not constitute a violation of any known rule or policy – SLD cited nothing to indicate “improper involvement,” much less a surrender of control by the Applicants.⁸⁶ The Applications thus are readily distinguishable from the cases in which the Commission has affirmed the denial of funding to an applicant that “surrender[ed] control of the bidding process to a service provider that participate[d] in that bidding process.”⁸⁷ Spectrum was not listed as a contact on any Applicant's Form 470 or Form 471, did not prepare RFPs and distribute them to potential bidders, and no Applicant delegated authority to Spectrum.⁸⁸ Nor did any Applicant fail to disclose information about its competitive bidding process necessary for potential bidders to formulate bids⁸⁹ or not comply with other obligations.⁹⁰ Under the circumstances presented, there is no basis for denial of the Applicants' Funding Year 2002 requests.

⁸⁶ Prior to the Decisions, it does not appear that SLD ever had denied a funding request based on “improper vendor involvement,” and the adoption and application of such a standard, like SLD's retroactive application of its new policies to the Applicants, exceeds SLD's authority.

⁸⁷ *Mastermind* at ¶10.

⁸⁸ Compare *Mastermind* at ¶10 (by naming as its contact person an employee of a service provider who not only participated in the bidding process but was awarded a contract, and allowing that service provider to prepare and distribute RFPs to potential bidders, the applicant surrendered control of the bidding process); *A. R. Carethers SDA School, et al.*, 16 FCC Rcd 6943 (Com. Car. Bur. 2001) (applicants identified as contact person on Form 470 a person associated with the service provider); *Dickerson County Public Schools*, 17 FCC Rcd 9410 (Wireline Comp. Bur. 2002) (*same*).

⁸⁹ Compare *Ysleta Independent School District, Further Explanation of Administrator's Funding Decision*, December 3, 2002 at 6 (based on the facts, the applicant “could not have selected the most cost effective provider of service, with low cost being the primary factor ... because IBM [the vendor] did not specify the cost of the contract, because Ysleta selected IBM before the actual work for which funding would be requested was defined and quantified, and because the RFP's selection criteria do not include these factors.”).

⁹⁰ Compare *id.* at 6 (“Furthermore, Applicant's stated reasons for selecting IBM do not indicate that Applicant selected IBM based on whether IBM was the most cost-effective provider of service with low cost being the primary factor.”).

V. CONCLUSION

WHEREFORE, the foregoing premises duly considered, the SLD's Decisions denying the Funding Year 2002 requests of the El Monte Unified School District, the Hemet Unified School District, the Inglewood Unified School District, and Lucerne Valley Unified School District, the Romoland Elementary School District, and the Rosemead Elementary School District, should be reversed immediately.

Respectfully submitted,

**EL MONTE UNIFIED HIGH SCHOOL DISTRICT
HEMET UNIFIED SCHOOL DISTRICT
INGLEWOOD UNIFIED SCHOOL DISTRICT
LUCERNE VALLEY UNIFIED SCHOOL DISTRICT
ROMOLAND ELEMENTARY SCHOOL DISTRICT
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June 19, 2003

ATTACHMENT 1

**Schools and Libraries Universal Service
Description of Services Requested and Certification Form**

Estimated Average Burden Hours Per Response: 4 hours

**Instructions for Completing the
Schools and Libraries Universal Service
Description of Services Requested and Certification Form (FCC Form 470)**

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NOTICE

Section 54.504 of the Federal Communications Commission's rules requires all schools and libraries requesting universal service discounts to file—individually, or as a district or system, or as a consortium—this Description of Services Requested and Certification Form (FCC Form 470) with the Universal Service Administrator, which is the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC). 47 C.F.R. § 54.504. For purposes of this form, the universal service administrator will be referred to as the “SLD” or “Fund Administrator.” The collection of information stems from the Commission's authority under Section 254 of the Communications Act of 1934, as amended, 47 U.S.C. § 254. The data collected in Form 470 will be used to ensure that schools and libraries and any consortia they comprise comply with the competitive bidding requirement contained in 47 C.F.R. § 54.504.

The FCC is authorized under the Communications Act of 1934, as amended, to collect the information we request in this form. We will use the information you provide to determine whether approving this application is in the public interest. If we believe there may be a violation or potential violation of any statute, regulation, rule or order, your application may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your application may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government is a party of a proceeding before the body or has an interest in the proceeding.

If you owe a past due debt to the Federal government, the information you provide may also be disclosed to the Department of the Treasury Financial Management Service, other Federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized.

If you do not provide the information requested on this form, the processing of your application may be delayed or your application may be returned to you without action.

The foregoing Notice is required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 44 U.S.C. § 3501, *et seq.* An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Public reporting burden for this collection of information is estimated to average four hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing, and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the reporting burden, to the Federal Communications Commission, Performance Evaluation and Records Management Branch, Washington, DC 20554.

I. INTRODUCTION

- The purpose of the FCC Form 470 is to open a competitive bidding process for the services desired.
- An applicant cannot seek discounts for services in a category of service on the Form 471 if those services in those categories were not indicated on a Form 470.
- The Form 470 **MUST** be completed by the entity that will negotiate with potential service providers.
- The Form 470 cannot be completed by a service provider who will participate in the competitive process as a bidder. If a service provider is involved in preparing the Form 470 and that service provider appears on the associated Form 471, this will taint the competitive process and lead to denial of funding requests that rely on that Form 470.
- The Form 470 applicant is responsible for ensuring an open, fair competitive process and selecting the most cost-effective provider of the desired services.
- Applicants should save all competing bids for services to be able to demonstrate that the bid they chose is the most cost-effective, with price being the primary consideration.

On May 7, 1997, the Commission adopted rules providing discounts on eligible telecommunications services, Internet access, and internal connections, for eligible schools and libraries. To initiate the required competitive bidding process, begin by filing this form with the Schools and Libraries Division (SLD). The SLD will post this information on the SLD's web site for at least 28 days to fulfill the competitive bidding requirement. Contracts for newly contracted services or the selection of service providers for tariffed or month-to-month services cannot occur earlier than 28 days after the descriptions set forth in the relevant Form 470 posted on the SLD web site < www.sl.universalservice.org >. The SLD will notify the applicant of the date that the applicant's request is posted and the date on which the 28-day waiting period ends. Those with questions about this form may call the SLD's Client Service Bureau toll-free at 1-888-203-8100.

II. FILING REQUIREMENTS AND GENERAL INSTRUCTIONS

A. Who Must File

Schools and libraries requesting universal service discounts must seek competitive bids using Form 470. The entity that will negotiate with potential service providers should complete Form 470. The Form 470 cannot be completed by a service provider who will participate in the competitive process as a bidder.

For purposes of the universal service support mechanism, schools must meet the statutory definition of elementary and secondary schools found in the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. § 8801(14) and (26). An elementary school is a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law. 47 C.F.R. § 54.500(b) and 20 U.S.C. § 8801(14). A secondary school is a non-profit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under state law, except that such term does not include any education beyond grade 12. 47 C.F.R. § 54.500(j) and 20 U.S.C. § 8801(26). Schools operating as for-profit businesses or who have endowments exceeding \$50 million are not eligible. 47 C.F.R. § 54.501(b)(2) and (b)(3).

Libraries must meet the statutory definition of library or library consortium found in the Library Services and Technology Act, Pub. L. No. 104-208, sec. 211 et seq., 110 Stat. 3009 (1996) (LSTA) and must be eligible for assistance from a state library administrative agency under that Act. A library includes: "(1) a public library; (2) a public elementary school or secondary school library; (3) an academic library; (4) a research library, which for the purposes of this definition means a library that: (i) makes publicly available library services and material suitable for scholarly research and not otherwise available to the public; and (ii) is not an integral part of an institution of higher education; and (5) a private library, but only if the state in which such private library is located determines that the library should be considered a library for purposes of this definition." 47 C.F.R. § 54.500(c). A library's eligibility for universal service funding also depends on its funding as an independent entity. **Only libraries whose budgets are completely separate from any schools (including, but not limited to, elementary and secondary schools, colleges and universities) shall be eligible to receive discounted services under the universal**

service support mechanism. 47 C.F.R. § 54.501(c)(2). For example, an elementary school library would only be eligible to receive discounted services if its budget were completely separate from the elementary school. If its budget were not completely separate from the elementary school, the elementary school library would not be eligible for support independent from the school with which it is associated.

A library consortium is "any local, statewide, regional, or interstate cooperative association of libraries that provides for the systematic and effective coordination of the resources of school, public, academic, and special libraries and information centers, for improving services to the clientele of such libraries." 47 C.F.R. § 54.500(d).

Libraries operating as for-profit business shall not be eligible for discounts. 47 C.F.R. § 54.501(c)(3).

B. When, Where, and How Many Forms 470 to File

Beginning with the application process for Funding Year 2000 (July 1, 2000 through June 30, 2001), you are required to file Form 470 in the current application period only if you are applying for discounts for one of the following types of services:

- tariffed services (telecommunications services purchased at regulated rates) for which you do not have a signed, written contract (a Form 470 must be filed for these services each year);
- month-to-month Internet access, cellular services, or paging services for which you do not have a written contract but for which your standard monthly bills are proof of a binding, legal arrangement (a Form 470 must be filed for these services each year);
- any services for which you seek a new contract; or
- any multi-year contract signed on or before July 10, 1997, but for which you have not before filed a Form 470 in any previous program year.

Notice will be posted each year on the SLD web site <www.sl.universalservice.org> when we will begin accepting Forms 470 for posting. This notice will be posted at least 12 months before the start of the appropriate funding year. The precise timeframe for filing Form 470 depends on the kind of service you are seeking:

- For tariffed telecommunications services or month-to-month services, Form 470 must be filed at least 28 days before you file Form 471.
- For contract services for which you are seeking a new contract for the coming funding year, you may file Form 470 after the SLD posts the above notice whenever you wish to begin your procurement process, as long as it is at least 28 days before you file Form 471.
- For a contract signed on or before July 10, 1997, for which no Form 470 has ever been filed, you must file a Form 470 at least 28 days before you file Form 471.
- For multi-year contracts signed pursuant to the posting of a Form 470 in a previous funding year, you will not need to file a new Form 470 for the upcoming funding year. Your 28 days began with the date of your original Form 470 posting.

Services that are covered by a **qualified existing contract** for all or part of the funding year do not require filing of Form 470, since you are not seeking bids for these services. A qualified existing contract is:

- a signed, written contract executed pursuant to the posting of a Form 470 in a previous funding year, OR
- a contract signed on or before July 10, 1997 and reported on a Form 470 in a previous year as an existing contract.

If you are seeking support for eligible services not covered by a qualified, existing contract, you must file Form 470 **either electronically at the SLD web site, <www.sl.universalservice.org>, or at the address listed at the bottom of the form (SLD-Form 470, P.O. Box 7026, Lawrence, Kansas 66046-7026).** For express delivery or U.S. Postal Service Return Receipt Requested, send to: **SLD-Form 470, c/o Ms. Smith, 3833 Greenway Drive, Lawrence, Kansas 66046**, phone (888) 203-8100. **DO NOT FILE THIS OR ANY OTHER UNIVERSAL SERVICE FORM WITH THE FEDERAL COMMUNICATIONS COMMISSION.**

You may file one Form 470 for all of the services for which you are required to file Form 470, or you may file separate Forms 470 for each type of service. Also, an individual school or library may be covered by more than one Form 470 filed by different consortia for different services.

Once you file your Form 470, it is posted to the SLD web site for competitive bidding. Your form must be posted for at least 28 days on the SLD web site before you can sign a contract or enter into an agreement for services. After you sign a contract or enter into an agreement, you (or the billed entities you represent) can initiate the next step in the application process, the filing of FCC Form 471. Upon processing or posting of the Form 470, the SLD will notify you of the date upon which you may sign a contract or enter into an agreement for new services or file Form 471. 47 C.F.R. §54.504(b)(4). This date will be referred to as the "Allowable Vendor Selection/Contract Date."

C. Assistance in Completing This Form

There are several sources of assistance to guide you in completing this form. If you complete this form electronically on the SLD web site <www.sl.universalservice.org>, prompts may occur to assist you as you enter information. Whether you file electronically or on paper, you are also urged to consult the Reference Area of the SLD web site, <www.sl.universalservice.org>, for additional program guidance that may be useful in completing this form. . Further information is also available from the SLD Client Service Bureau via toll-free telephone at **1-888-203-8100**; via e-mail at **question@universalservice.org**; or via fax at **1-888-276-8736**.

D. Compliance

Schools and libraries filing false information are subject to penalties for false statements under Title 18 of the United States Code, 18 U.S.C. § 1001. Applicants should retain the worksheets and other records they use to compile these forms for five years. Thus, if applicants represent multiple entities, collect data from those entities, and add up that data, they should retain those data sheets for five years. If an applicant is audited, it should be prepared to make the worksheets and other records used to compile these forms available to the auditor and/or the Administrator, and it should be able to demonstrate to the auditor and/or Administrator how the entries in its application were provided.

III. MINIMUM PROCESSING STANDARDS AND FILING REQUIREMENT

Form 470 Minimum Processing Standards

When a Form 470 is received by the SLD, the form is first reviewed to make sure it complies with the following requirements before data entry begins. These minimum processing requirements are necessary in order to ensure the timely and efficient processing of properly completed applications. If a Form 470 fails to meet these requirements, the Form 470 will be rejected. The SLD may be prevented from returning the rejected Form 470 to the sender if the form lacks essential identifying information. If an applicant receives a returned Form 470, it is important that it resubmit the corrected form quickly. Once the corrected form is successfully data entered, the form will be posted to the SLD web site. The posting of the form to the SLD web site marks the beginning of the required 28-day waiting period.

Manual Filers

1. Correct Form: Each Form 470 must be:

- the correct, OMB-approved FCC Form 470, with a date of September 1999 or later in the lower right hand corner;
- submitted by regular mail, express delivery, or U.S. Postal Service Return Receipt Requested, or hand delivery. Forms may not be submitted by fax or e-mail. You are advised to keep proof of the date of mailing.

2. Applicant Address and Identifications: In Block 1, each of the following items must be properly completed:

- Item (1) or (3) Either the Name of the Applicant or the Entity Number;
- Item (2) Funding Year
- Item (6a) Contact Person Name

If any of these items is blank, and the information cannot be obtained from the page headers, the Form 470 will be rejected.

3. Complete Submission of Form 470: All 5 blocks of the Form 470 must be submitted. If any Block (1-5) is missing, the form will be rejected.

4. Valid Certification: Block 5, Item (25) Signature of authorized person must be completed. If Item (25) is left blank, the Form 470 will be rejected.

Online Filers:

When Blocks 1-4 of a Form 470 are submitted electronically, the applicant must also (1) submit the completed Block 5 certification online with a User ID and a PIN or (2) submit the completed and signed Block 5 certification manually by mail, express delivery or U.S. Postal Service Return Receipt Requested. If the Block 5 certification is submitted manually, you are advised to keep proof of the date of mailing. The Block 5 certification is reviewed to make sure it complies with the requirements listed in #4 above. Reviewers also look for the Form 470 Application Number before the Certification and Signature Page is accepted and the Form 470 reaches "certified" status. If the Block 5 certification document lacks the information necessary to match your manually submitted certification with the electronically filed Blocks 1-4 of the form, then your application will not meet the application filing requirements.

Filing Requirement for Forms 470 Submitted Manually and Online

It is vital to assure that a completed Form 470 Certification is filed in a timely fashion. A completed Form 470 Certification is a Block 5 certification submitted online using a User ID and a PIN or a Block 5 certification with the signature of the authorized person. Forms 470 with completed certifications submitted in a previous year meet this requirement, as do those filed for the current funding year either online by the close of the Form 471 application filing window or with a postmark date no later than the close of the Form 471 application filing window. Any Form 471 Block 5 funding request based on a Form 470 whose certification has not been received or postmarked by 11:59 p.m. EST on the close of the Form 471 application filing window will be rejected.

IV. SPECIFIC INSTRUCTIONS

You are encouraged to complete, submit, and certify this Form electronically at <www.sl.universalservice.org>. If you file manually, the Form 470 can be downloaded from the SLD web site. If you file paper copies of the application, please type or clearly print in the spaces provided and attach additional pages if necessary and when required. Instructions for completing each Block and Item of the Form 470 can also be downloaded from the SLD web site. No Forms 470 will be accepted if sent via e-mail or fax.

A. Top of Form

The data at the top of Form 470 will help both you and the SLD identify each particular Form 470 you file.

“Do Not Write In This Area”—The SLD uses this space to apply a barcode to your form upon receipt, so that we can properly track and archive your form.

Applicant’s Form Identifier—If you are filing more than one Form 470, please use this space to assign a unique number or letter of your own devising to facilitate communication with us about THIS particular Form 470. This Applicant’s Form Identifier can be very simple; for example, if you are filing three Forms 470, you might label them “A,” “B,” and “C.” The Applicant’s Form Identifier can also be descriptive, such as “School Internet.” Choose identifiers that suit your own record-keeping needs.

Form 470 Application Number—The SLD will assign and insert your Form 470 Application Number. Leave this item blank.

Top of each page after page 1: If you are filing this application manually, to help alleviate problems caused if the pages of an application become separated, please provide the Entity Number (from Item 3, below), your Applicant’s Form Identifier, and name and phone number of the contact person (from Item 6, below) at the top of each page of the application in the space provided. If you are filing electronically, this information will automatically appear at the top of each page.

B. Block 1: Applicant Address and Identifications

Block 1 of Form 470 asks you for your address and basic identifications. Throughout this form, “you” refers to “the applicant” – a school or library, or an entity filing on behalf of schools and libraries. The Form 470 cannot be completed by a service provider who will participate in the competitive process as a bidder.

Item (1) – Provide the name of the Applicant. You may be an individual school, a school district, a library (outlet/branch, system) or a consortium of those entities. You may also be a city, a state, or an entity created solely to participate in this universal service discount mechanism.

Item (2) – Funding years begin on July 1 and end on June 30 each year. For example, Funding Year 2003 runs from July 1, 2003 to June 30, 2004. Provide the funding year for which you are applying for funds by filling in the appropriate year in the blanks provided (e.g., July 1, 2003 through June 30, 2004).

Item (3) – Your Entity Number is a unique number assigned to your organization or institution by the SLD as a means of identifying you every time you file an application or otherwise communicate with us. If you have applied for universal service funds in previous years, or have

been identified in an application filed on your behalf, you have already been assigned an Entity Number. If you do not have a record of your Entity Number, or if you have never been assigned such a number, please call the SLD Client Service Bureau at 1-888-203-8100.

Item (4)(a)-(4)(d) – Provide your full mailing address, whether a street address, Post Office Box number, or route number. You are strongly encouraged to provide a street address rather than a Post Office Box if possible, as the Fund Administrator may need to contact you via overnight or express delivery. In addition, please provide your telephone number (with area code and extension), fax number (including area code), and e-mail address (if you have one).

Item (5) – Check the one box that best describes the type of application you are filing. If you are filing as a library (outlet/branch, system, or library consortium applying as a library), you should check the first box. If you are filing as an individual school, you should check the second box. If you are filing as a school district, you should check the third box. If you are filing as a consortium, you should check the fourth box. (You may be a consortium of schools, libraries, or some combination of the above which may or may not include ineligible entities.)

Item (6)(a) – Provide the name of the person who should be contacted with questions about this application. This person should be able to answer questions regarding the information included on this form and the services you request, including how to obtain a copy of your request for proposal (RFP), if you have prepared one.

Item (6)(b)-(6)(e) – If the contact person's address, phone number, fax number, or e-mail address is different from those specified for the applicant (completed in Item (4)), please provide that information here. You **MUST** then check the preferred mode of contact. Wherever possible, the SLD will use this mode to contact you.

C. Block 2: Summary Description of Needs or Services Requested

Block 2 of Form 470 asks you to describe the services you desire.

Item (7) – Specify here the kind(s) of services requested in this Form 470. You may check one or more of these choices, depending on the range of services you will be including on one Form 470.

Item (7)(a) – Check this box if this Form 470 requests services which are tariffed (telecommunications services for which you do not have a signed, written contract). These services require posting of a Form 470 for each funding year.

Item (7)(b) – Check this box if this Form 470 requests Internet access, cellular service, or paging services provided on a month-to-month basis without a written contract. These services require posting of a Form 470 for each funding year.

Item (7)(c) – Check this box if this Form 470 seeks new services for which you wish to sign a new contract. You may file a Form 470 for a new contract after notice is posted on the SLD web site that the SLD will begin accepting Forms 470 for the appropriate funding year for posting.

Item (7)(d) – Check this box if this Form 470 describes services provided under a multi-year contract that was signed on or before July 10, 1997 but that was never featured on a Form 470 in previous program years. For example, if you are applying for the E-rate for the very first time for Funding Year 2003 (07/01/2003–06/30/2004), and some or all of your services are provided under a written 10-year contract which was signed on July 1, 1997, you will need to file a Form 470 for this contract. In future years, for as long as that contract remains in force, you will not need to file a Form 470 for those services. There is no required timeframe for filing a Form 470 for this purpose, but your form must be posted for at least 28 days on the SLD web site before you can file a Form 471 online.

Items (8)-(10) – One or more of Items (8)-(10) must be completed to provide potential bidders with particular information about the services you are seeking. For more information on eligible services, please refer to the Eligible Services List on the SLD web site <www.sl.universalservice.org> or call the SLD Client Service Bureau toll-free at 1-888-203-8100. Once you check the relevant category of service box(es) in Items (8), (9), and/or (10), you must check either box (a) or (b) under the selected item and complete the item. You cannot seek discounts on services in a category of service on the Form 471 if you have not competitively bid those services in the same category of service on the Form 470.

The specific data requested in Items (8)-(10) are sought to provide potential service providers with information so that they may contact you if necessary for detailed information on your specific requirements. **This requirement is not intended to restrict your ability to contract for newly contracted services or enter into agreements for tariffed or month-to-month services for whatever technologies best meet your educational purposes as authorized by FCC rules and the Telecommunications Act of 1996.** It is important that you complete all categories that are relevant to your requested services, so that the Fund Administrator can confirm that you have met the competitive bidding requirement before signing any contracts for newly contracted services or entering into agreements for tariffed or month-to-month services for which discounts are requested in FCC Form 471.

Item (8) – Check this box if you are seeking telecommunications services to be provided by one or more telecommunications services providers. **Important note: Only telecommunications services requested from telecommunications companies who provide their telecommunications services on a common carriage basis (meaning they provide their services for a fee to the general public) will be eligible for discount(s) under the universal service support mechanism. If you request telecommunications services from a telecommunications provider that does not provide telecommunications services on a common carriage basis, your Form 471 Funding Request for such services will be denied.** Telecommunications is “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.” 47 U.S.C. § 153(43) and 47 C.F.R. § 54.5. All commercially available

telecommunications services, including charges such as state and federal taxes, are eligible for support under the universal service discount mechanism. For example, local and long distance telephone services are generally considered telecommunications services. As another example, high-speed transmission lines over the public switched telecommunications network leased from an eligible telecommunications provider would be listed here as a telecommunications service. See the Eligible Services List on the SLD web site <www.sl.universalservice.org> for more information.

Item (8)(a) – Check this box if you have a Request for Proposal (RFP) that will provide potential bidders with specific information about the particular telecommunications services or functions you are seeking, and what quantity and/or capacity you seek. For example, you might have an RFP for voice services that specifies “local and long distance voice services sought for 20 existing phone lines, plus 10 new additional lines.” If you check (8)(a), you must indicate where this RFP is available, such as on your web site (list the web address); via the Contact Person listed in Item (6); and/or via the alternative contact person listed in Item (11). If the RFP is not posted on a web site, your designated contact person must be able to provide it to service providers on request as of the date that your Form 470 is posted.

Item (8)(b) – Check this box if you do NOT have a Request for Proposal (RFP) for the telecommunications services you seek. If you check (8)(b), you must fill in details in the space provided about the specific telecommunications services or functions and quantity and/or capacity of service. For example, you might list “videoconferencing services” under Service or Function, and “for three school buildings” under Quantity and/or Capacity.

Item (9) – Check this box if you are seeking Internet access services. Basic conduit non-content access to the Internet is eligible for support under the universal service discount program. See the Eligible Services List on the SLD web site <www.sl.universalservice.org> for more information.

Please note that while schools and libraries may obtain universal service discounts on access to the Internet, discounts are not available on the separate charges for particular proprietary content or other information services or on a bundled package of access and content, unless the bundled package includes minimal content and provides a more cost-effective means of securing access to the Internet than other non-content alternatives.

Item (9)(a) – Check this box if you have a Request for Proposal (RFP) that will provide potential bidders with specific information about the particular Internet access services or functions you are seeking, and what quantity and/or capacity you seek. For example, you might have an RFP for Internet access that specifies “high-speed direct access to the Internet sought for 10 public Internet stations in one library facility.” If you check (9)(a), you must indicate where this RFP is available, such as on your web site (list the web address); via the contact person listed in Item (6); and/or via the alternative contact person listed in Item (11). If the RFP is not posted on a web site, your designated contact person must be able to provide it to service providers on request as of the date that your Form 470 is posted.